CEFTA 2006:

A New Regional Trade Agreement for the Balkans

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I. INTRODUCTION

It took the Balkan states only eight months to negotiate the Central European Free Trade Agreement (CEFTA) but it will take them much longer to reap all the potential benefits that may come from this regional trade agreement. The immediate advantage offered by CEFTA is that regional trade is not governed any longer by 31 (different) bilateral agreements but by one single agreement: CEFTA. However, in many respects, CEFTA is less ambitious than one could have hoped for, especially in the area of trade in services. CEFTA's success therefore depends on whether the body responsible for supervising and administering its implementation, the Joint Committee, will effectively and smoothly function.

This article discusses the rationale for concluding a regional trade agreement in the Balkans, including the European Union's role in negotiations. Next, the article identifies the main elements of the CEFTA and their connection with relevant World Trade Organization (WTO) and European Community (EC) rules. Finally, the article looks more closely at some issues that arise with respect to both trade in goods and trade in services. The article concludes by identifying CEFTA as an important step towards the creation of a free trade area within the region, but only the first step among many along the road to liberalization and harmonization of trade regulation.

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A. Rationale for Negotiating a Regional Trade Agreement for the Balkans

CEFTA 2006[1] is a regional trade agreement (RTA)[2] concluded by the Balkan states[3] (hereinafter referred to as the Parties). It was signed on 19 December 2006 and entered into force on 26 July 2007. CEFTA 2006 replaces the 31 bilateral free trade agreements that hitherto governed the bilateral trade relations between the Parties. This network of criss-cross trade agreements may have stimulated trade between some of the Parties on a bilateral level but failed to do so on a regional level. Among other factors, this was due to the fact that: (i) traders had a hard time identifying the relevant rules governing cross-border trade with a particular country (i.e. there was a lack of transparency resulting in unnecessary information costs); and (ii) the patchwork of various rules of origin and preferences which applied to cross-border trade between the Parties considerably raised the compliance costs for traders.

Against this backdrop, the Parties agreed to negotiate an RTA with a view to achieving at least two objectives. The first objective was to overcome the legal diversity und uncertainty caused by the different bilateral free trade agreements by streamlining the rules on cross-border trade in the region.[4] The second objective was to add new rules on subject matters such as trade in services, investment and government procurement. The first objective, in particular, is intended to level the playing field for all traders in the region so as to avoid the diversion of intraregional trade flows and to create a viable basis for increasing these trade flows.[5] In turn, it is hoped that vitalizing the regional trade links may help in forging closer political ties between the Parties.[6] Furthermore, the new RTA aims at improving the regional investment climate through new rules on investment.[7] This goal is said to be of paramount importance given that foreign direct investment flows in the Balkans' region are rather low.[8]

The negotiations did not start from scratch; rather, they built upon the former CEFTA, which had involved some of the Parties.[9] As a result, the negotiations did not last very long, beginning on a political level on 6 April 2006.[10] Hence, there was a mere eight months between the first negotiations and the

signing of the agreement. Technically speaking, these negotiations resulted in "The Agreement on Amendment of and Accession to the Central European Free Trade Agreement," commonly referred to as CEFTA 2006.[11]

B. The Role of the EU in the Negotiations

The European Union (EU) was heavily involved in the aforementioned negotiations principally for the following reasons. First, the EU plays a leading role, both politically as well as financially, in the "Stability Pact for South Eastern Europe," an instrument which provides the countries of that region with a framework for cooperation, especially in the areas of: (i) economic and social development; (ii) justice and home affairs; and (iii) security.[12] Since the negotiations on CEFTA 2006 were conducted within that framework, the EU assumed a role of technical facilitator and political mediator for these negotiations. Accordingly, Brussels was chosen as "neutral" place for conducting the negotiations. The second reason for the EU's involvement in negotiations is that all of the Parties aspire to become members of the EU at some point in the future even though future EU membership may be a very distant prospect.[13] Thus, both the Parties and the EU had an interest in ensuring that the new RTA would not—in some way or the other—become a stumbling block on the, albeit uncertain, path to EU membership.

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It is interesting to note, in this context, that the EC started its own bilateral negotiations with the Parties on "Stabilization and Association" agreements, to be concluded between the EC and its member states, on the one hand, and each of the Parties, individually, on the other. These agreements are a first step towards EU membership and, consequently, go beyond trade issues. Agreements with Croatia and Macedonia have already entered into force.[14] Additionally, the EU has commenced parallel accession negotiations with Croatia.[15]

II. CEFTA 2006 IN A NUTSHELL

A. Main Elements

CEFTA covers trade in both goods and services. The rules on trade in both agricultural and industrial goods comprise provisions on, among others: (i) the reduction and elimination of customs duties on both exports and imports;[16] (ii) the abolition of quantitative restrictions and measures having equivalent effect;[17] (iii) the application of SPS and TBT measures;[18] (iv) rules of origin, administrative cooperation and assistance in customs matters, and trade facilitation;[19] (v) the prohibition of fiscal discrimination;[20] (vi) trade remedies (anti-dumping duties and safeguards);[21] (vii) government procurement;[22] and (viii) the protection of intellectual property.[23] By comparison, the rules on trade in services are much less comprehensive. In addition, CEFTA establishes rules on: (i) competition;[24] (ii) investment;[25] (iii) transparency;[26] and (iv) arbitration.[27]

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B. Reference to WTO and EC Rules

Before addressing some of the objectives of CEFTA and the provisions that assist in their attainment, it must be highlighted that CEFTA places great emphasis on some of the rules of both the WTO and the EC for attaining the objectives under CEFTA.

1. WTO Rules

The "Joint Declaration concerning the Application of WTO Rules and Procedures," which is an integral part of CEFTA according to its Article 47 (1), states as follows:

> To the extent that references are made in the context of this Agreement, to the rules and procedures set out in Annex 1A, Annex 1B and Annex 1C of the Marrakesh Agreement Establishing the World Trade Organization, the Parties agree to apply them irrespective of whether or not they are members of WTO.[28]

The core message of this joint declaration is that even those Parties which are not yet members of the WTO are bound by the WTO rules and procedures referred to in CEFTA.[29] This message must be seen in light of the fact that the majority of the Parties are WTO members. Only Bosnia and Herzegovina, Montenegro and Serbia have not yet become members of the WTO, however, they are currently in the process of negotiating their accession to the WTO.[30]

The areas where CEFTA most heavily relies on the relevant WTO agreements are: (i) sanitary and phytosanitary (SPS) measures; (ii) technical barriers to trade (TBT); (iii) trade remedies; and (iv) the protection of intellectual property. Some of these areas are revisited below

2. EC Rules

The "Joint Declaration on Articles 20 and 21," which is an integral part of CEFTA according to its Article 47 (1), provides the following in its second paragraph:

"The competition provisions in the domestic legislation of the Parties concerned shall be brought into compliance with the principles of Articles 81, 82, 86 and 87 of the Treaty Establishing the European Community."[31] This obligation must be read in conjunction with the first paragraph which mandates that the Parties put their relevant domestic provisions into effect by 1 May 2010 at the latest. Articles 20 and 21 of CEFTA address "rules of competition concerning undertakings" and "state aid", respectively. Articles 81, 82, 86 and 87 of the EC Treaty are the corresponding provisions on these subject matters as regards the European Community.[32] By requiring the Parties to bring their domestic laws into conformity with the "principles" of the relevant Community rules, the Parties are under a duty to harmonize the main elements of their domestic competition laws with the principles underlying the competition rules of the EC. This harmonization requirement has to be seen in view of the Parties' efforts to eventually become members of the EU.

Another area where Community rules play an important part in the CEFTA context is with respect to rules of origin. The rules of origin applying in trade between and among the Parties are laid down in Annex 4 to CEFTA.[33] These rules of origin are identical to the Pan-Euro-Med rules of origin, thereby allowing for diagonal cumulation of origin between the CEFTA region and the Pan-Euro-Med region.[34]

III. CEFTA 2006: SOME HIGHLIGHTS

This is not the place to scrutinize the CEFTA in its entirety. Therefore, the following analysis focuses on only selected issues, with respect to trade in goods, on the one hand, and trade in services, on the other.

A. Trade in Goods

1. Application of SPS Measures

Article 12 of CEFTA deals with SPS measures.[35] The first paragraph of this provision emphasizes that the application of SPS measures by the Parties is governed by the WTO Agreement on the Application of SPS Measures (SPS Agreement). The second paragraph calls on the Parties to cooperate in the field of SPS measures but this obligation is *qualified* by the following terms: "with the aim of applying relevant regulations in a non-discriminatory manner."[36] Pursuant to this qualification, the observance of the non-discrimination principle in the application of SPS measures by the Parties is an objective but not an obligation.

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The qualification on SPS cooperation appears to contradict Article 2.3 of the SPS Agreement. Its first sentence reads: "Members shall ensure that their sanitary and phytosanitary measures do *not* arbitrarily or unjustifiably discriminate between Members where identical or similar conditions prevail, including between their own territory and that of other Members" (emphasis added).[37] It follows that Article 2.3 of the SPS Agreement embodies the non-discrimination principle, both in terms of the most-favored nation as well as the national treatment principle,[38] provided the conditions prevailing in the countries in question are identical or similar.[39] In light of the foregoing, it seems that any inconsistency between the first and second paragraph of Article 12 of CEFTA can only be avoided if the second paragraph is read as demanding the Parties to strictly adhere to the non-discrimination principle when applying SPS measures.

2. Technical Barriers to Trade

Article 13 of CEFTA is concerned with TBTs.[40] The first paragraph of this provision takes the same approach as Article 12 (1) of CEFTA by requiring that the Parties' application of TBT is governed by the WTO Agreement on TBT (TBT Agreement). However, Article 13 (1) of CEFTA somewhat limits the significance of the TBT Agreement for the purposes of CEFTA by adding "except as otherwise provided for in this Article."[41] Since those Parties which are WTO members must not deviate from their obligations arising under the TBT Agreement,[42] the limitation is, arguably, not meant as an excuse for not meeting the conditions of the TBT Agreement but as an indication that Article 13 of CEFTA goes beyond the TBT Agreement in some respects.

The second and third paragraph of Article 13 of CEFTA relate to "unnecessary" TBT.[43] While the second paragraph requests the Parties to "identify and eliminate" such unnecessary TBT, the third paragraph obliges them "not to introduce new unnecessary" TBT, thereby imposing a standstill obligation.[44] Neither requirement appears to add anything new to the obligations under the TBT Agreement. The first sentence of Article 2.2 of the TBT Agreement compels WTO members to "ensure that technical regulations are not prepared, adopted or applied with a view to or with the effect of creating *unnecessary* obstacles to international trade" (emphasis added).[45] This obligation implies not to introduce new *unnecessary* TBT.[46] Moreover, Article 2.3 of the TBT Agreement prohibits the maintenance of technical regulations "if the circumstances or objectives giving rise to their adoption no longer exist or if the changed circumstances or objectives can be addressed in a less trade-restrictive manner."[47] This prohibition implies a review of existing TBT and either discontinuance or modification if they have become unnecessary.[48]

In view of the above, the real value of the first and second paragraphs of Article 13 of CEFTA lies in their *procedural* ramifications. Both provisions envisage that a special committee on TBT will: (i) "oversee the process of elimination of unnecessary technical barriers to trade"; and (ii) serve as a forum for cooperation so as to "facilitate and harmonise technical regulations, standards and mandatory conformity assessment procedures."[49] Therefore, the Parties have committed themselves to rely on the committee for achieving "the aim of eliminating technical barriers to trade."

A last point merits attention as regards TBT. According to Article 13 (3) lit. c) of CEFTA, the Parties "are strongly encouraged, without prejudice to the WTO Agreement on Technical Barriers to Trade, to harmonize their technical regulations, standards, and procedures for assessment of conformity with those in the European Community."[50] This provision reflects the attempts made by all of the Parties to bring their technical regulations, standards and conformity assessment procedures in line with those of the EC. These attempts are obviously driven by the desire to prepare the ground for an accession to the EU. However, the process of harmonizing the national technical regulations, standards and conformity assessment procedures with those of the Community proceeds at different speed in each of the Parties. Thus, some Parties have completed the adoption of technical regulations, standards or conformity assessment procedures in certain areas whereas other Parties have not yet completed this process, in the same areas. This may actually create new TBTs to the extent that the technical regulations, standards and conformity assessment procedures of the EC are incompatible with the national technical regulations, standards and conformity assessment procedures of those Parties who have not yet completed the harmonization process.

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3. The Link between the Rules on Competition and Trade Remedies

CEFTA has a chapter on "competition rules", including rules of competition concerning undertakings[51] and state aid,[52] as well as a chapter on "contingent protection rules" (herein labelled as trade remedies), including anti-dumping measures[53] and general safeguards.[54] Although the chapter on trade remedies does not include a provision on countervailing duties, the provision on state aid (in the competition chapter) provides that that provision does not "prejudice or affect in any way the taking by any Party of countervailing measures."[55]

The combination of rules on competition, including state aid, and rules on trade remedies, especially those on anti-dumping and countervailing measures, is somewhat odd. Notwithstanding the contentious question of whether rules on anti-dumping and countervailing measures are "other restrictive regulations of commerce" within the meaning of Article XXIV:8 (b) of the GATT 1994 (which have to be eliminated as regards "substantially all the trade" within a free-trade area),[56] rules on competition, including state aid, may effectively function as a substitute for rules on anti-dumping and countervailing measures.[57]

One of the reasons to have rules on competition and trade remedies side by side in CEFTA may be that some of the Parties do not yet have domestic laws on competition in line with Articles 20 and 21 of CEFTA. This is reflected by the "Joint Declaration on Articles 20 and 21" whose first paragraph requests the Parties to ensure the applicability of appropriate competition provisions in their domestic legislation "no later than 1 May 2010."[58] However, the same problem arises in the context of the trade remedies rules, as is apparent from the "Joint Declaration on Articles 21, 22 and 23." The latter obliges the Parties to refrain from imposing trade remedies "until they have issued detailed internal regulations laying down rules and procedures and determining technical issues relating to the application of such measures."[59]

4. Investment

CEFTA is an RTA that includes investment provisions that are not confined to investment promotion and cooperation, thereby adding to the rising number of RTAs that combine rules on trade and investment.[60] The inclusion of substantive provisions on investment is not surprising since the Balkans region is in dire need of a significant increase in investment flows. Consequently, one of CEFTA's essential objectives is to "foster investment by means of fair, clear, stable and predictable rules."[61]

CEFTA's investment chapter includes a provision Article 32, on the "treatment of investments."[62] This provision refers

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to "investments of the investors of the other Parties" as the subject of protection under the standards established by said provision.[63] These standards include, among others: (i) fair and equitable treatment; (ii) full protection and security; (iii) the prohibition of unreasonable and discriminatory measures regarding the management, maintenance, use, enjoyment, extension, sale or liquidation of investments; and (iv) national treatment and most-favored nation treatment (whichever is the better) as regards both the pre- and post-establishment phase.[64]

The issue of expropriation is, somewhat unfortunately, not explicitly addressed in this provision. Bilateral investment treaties usually clearly distinguish between provisions on expropriation, on the one hand, and fair and equitable treatment, on the other. Hence, it is unclear whether the latter standard could be invoked in accordance with Article 32 of CEFTA if a Party were to, either directly or indirectly, expropriate an investor of another Party. Furthermore, one could argue that the standard of full protection and security encompasses protection against expropriation. However, the scope of such protection is also unclear. Protection against expropriation under bilateral investment treaties usually means that the governmental action at stake: (i) has been taken in the public interest, (ii) respected the due-process principle, (iii) was non-discriminatory; and (iv) was accompanied by payment of adequate compensation.[65]

Moreover, it is unclear whether or not CEFTA's investment chapter covers trade in services in the form of "commercial presence," i.e. where a service supplier of one Party supplies its services through commercial presence in the territory of another Party.[66] The investment chapter does not explicitly state that it is confined to trade in goods. The lack of such express exclusion could be understood to mean that the commercial presence of service suppliers is also covered by the investment chapter. However, CEFTA has a separate chapter on trade in services which defines trade in services "in accordance with Article I, and, if appropriate, Article XXVIII of the General Agreement on Trade in Services."[67] Therefore, CEFTA's chapter on trade in services also covers the commercial presence of service suppliers. This speaks against an interpretation whereby this mode of supply would be covered by the investment chapter. It must be noted, though, that such an interpretation does not further CEFTA's objective of promoting and fostering foreign direct investment since today trade in services accounts for almost two thirds of aggregate annual global investment flows.[68]

B. Trade in Services

The chapter of CEFTA on trade in services is nothing more than an expression of the Parties' intention "to gradually develop and broaden their cooperation with the aim of achieving a progressive liberalisation and mutual opening of their services markets."[69] To this end, the Parties will "review on an annual basis the results of the cooperation."[70] Put differently, the chapter on trade in services does not provide for: (i) any commitments on either market access or national treatment; and (ii) rules on domestic regulation affecting trade in services.

This lack of hard commitments or rules appears to be the consequence of a certain "fatigue" of the Parties in this particular area, stemming from their commitments on trade in services undertaken during negotiations on their accession to the WTO. This stands in stark contrast to the recent wave of trade agreements covering trade in services that mostly provide for commitments that surpass (by a fair margin) the commitments that their respective parties have undertaken in the WTO framework under GATS.[71]

IV. CONCLUSION

CEFTA represents an important step by the Balkans in aligning their external trade regimes so as to create a free-trade area within the region. In the long run, CEFTA is likely to spur cross-border trade and investment within the region, beyond current trade volumes and investment flows. Since the EU is expected to be loath to continue its expansion in the near future, if at all, despite ongoing accession negotiations with Croatia and Turkey, CEFTA is in a position to enjoy a long lifetime. The Parties are well advised therefore to make the best possible use of this instrument, to their own benefit.

Much of CEFTA's potential will only unfold in the future, though. Several reasons underpin this observation. First, the process of abolishing customs duties on all imports of *industrial* products will only be finished by the end of 2008. Customs duties on imports of *agricultural products* are only reduced or abolished, as the case may be, for a selected group of these products. Second, in the area of SPS and TBT measures, the Parties merely repeat their commitments under the corresponding WTO Agreements. CEFTA does not provide for the harmonization or mutual recognition of such measures but the Parties are required to enter into negotiations on harmonization and mutual recognition agreements in these areas. Third, the obligation on trade facilitation, which would prove highly beneficial for regional cross-border trade, is phrased in very general terms, simply requiring the Parties to "simplify and facilitate customs procedures and reduce, as far as possible, the formalities imposed on trade."[72] Fourth, the competition chapter does not immediately bite; rather, anti-competitive practices as well as the granting of state aid with trade-distorting potential may not be tamed before 1 May 2010. In addition, the Parties did not forego the possibility to impose trade remedies on the imports from any other Party.

Furthermore, CEFTA fails to enhance trade in services since the Parties did not subscribe to any new commitments in this area. This is regrettable given the importance of this sector for economic and social development. But CEFTA provides for the possibility that negotiations on new liberalization commitments will be launched although no date is set for the launch of such negotiations.

Against this backdrop, much will depend on the functioning of the Joint Committee—and the bodies established by the Joint Committee, such as the sub-committees on agriculture and SPS issues, customs and rules of origin as well as TBT and NTBs—which is composed of representatives of the Parties and has the task of supervising and administering the implementation of CEFTA. Thus, the Joint Committee holds the key for the success or failure of CEFTA. BLB

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1 *See generally* Agreement on Amendment of and Accession to the Central European Free Trade Agreement, Dec. 19, 2006, 20 I.L.M. 10 (2006 *available at* http://www.stabilitypact.org/wt2/TradeCEFTA2006.asp?editpage=0&EditMode= edit&textmode=0&Wysiwyg=1&PageURL=/wt2/TradeCEFTA2006.asp [hereinafter CEFTA 2006].

2 *See* R.V. Fiorentino, L. Verdeja, and C. Toqueboeuf, The Changing Landscape of Regional Trade Agreements: 2006 Update, WTO Discussion Paper No. 12, *available at* www.wto.org (outlining the latest developments in the area of RTAs); Regional Trade Agreements and the WTO Legal System (L. Bartels/F. Ortino eds., 2006) (describing the interrelationship between RTAs and the multilateral trading system).

3 These countries are: Albania, Bosnia and Herzegovina, Croatia, Macedonia, Moldova, Montenegro, Serbia and Kosovo (the latter represented by the United Nations Interim Administration Mission in Kosovo, in accordance with UN Security Council Resolution 1244). It should be noted that Bulgaria and Romania participated in the negotiations but did not become parties to CEFTA 2006 because they acceded to the EU on 1 January 2007.

4 *See* CEFTA 2006, *supra* note 1, Art. 1 (2) lit. a) (referring to the objective of consolidating "in a single agreement the existing level of trade liberalisation achieved through the network of bilateral free trade agreements already concluded between the Parties.").

5 *See id.* at art. 1 (2) lit. d) (mentioning the objective of eliminating "barriers to and distortions of trade and facilitate … the cross-border movement of goods and services between the territories of the Parties.").

6 *See* Neil Macdonald, *Free-trade zone unites old adversaries,* Financial Times (London), Jan. 16, 2007, at 6. *Cf.* Stefan Wagstyl, *Struggling towards stability: why Kosovo may hold the key to the Balkans' future,* Financial Times (London), Feb. 20, 2006 at 11 (pointing out that some formidable obstacles on the road to political normality remain).

7 *See* CEFTA 2006, *supra* note 1, art. 1 (2) lit. b) (pointing to the objective of improving "conditions further to promote investment, including foreign direct investment.").

8 For a brief overview of the situation relating to trade and investment within the region, and between the countries of the region and the EC, *see* Trade in South Eastern Europe, Memo/06/155, Apr. 5, 2006 *available at* http://trade.ec.europa.eu/doclib/docs/2006/april/tradoc_128216.pdf.

9 The Parties of the former CEFTA were: Bulgaria, Croatia, Macedonia and Romania.

10 *See* EC Press Release ,Apr. 5, 2006, IP/06/456.

11 *See generally* CEFTA 2006, *supra* note 1.

12 *See* Stability Pact for South Eastern Europe, *available at* http://www.stabilitypact.org/default.asp.

13 *See* Olli Rehn, *Brussels must offer the Balkans a credible future,* Financial Times (London), Apr. 3, 2006 at 11. Rehn is the EC commissioner for enlargement.

14 Croatia and Macedonia were both granted the status of so-called "candidate country."

15 Judy Dempsey, *Brussels offers entry talks to Croatia,* Financial Times (London), Jun. 18, 2004 at 6.

16 *See* CEFTA 2006, *supra* note 1 at Annex 1, art. 4, 8.

17 *See id.* at Annex 1, art. 3.

18 *See id.* at Annex 1, arts. 12, 13.

19 *See id.* at Annex 1, art. 14.

20 *See id.* at Annex 1, art. 15.

[21] *See* CEFTA 2006, *supra* note 1 at Annex 1, art. 22.

[22] *See id.* at Annex 1, arts. 34–36.

[23] *See id.* at Annex 1, arts. 37–39.

[24] *See id.* at Annex 1, arts. 19–21.

[25] *See id.* at Annex 1, arts. 30–33.

[26] *See* CEFTA 2006, *supra* note 1 at Annex 1, art. 44.

[27] *See id.* at Annex 1, art. 43.

[28] *Id.* at Annex 1, Joint Declaration concerning the Application of WTO Rules and Procedures; *see id.* at Annex 1, art. 47(1).

[29] It is self-evident that those Parties which are WTO members are bound by the WTO rules.

[30] *See* World Trade Organization: Accessions ,http://www.wto.org/english/thewto_e/acc_e/acc_e.htm (providing more information on the status of the respective negotiations on accession to the WTO).

[31] CEFTA 2006, *supra* note 1, Annex 1, Joint Declaration on Articles 20 and 21.

[32] *See* Treaty Establishing the European Community (consolidated text), arts. 81–82, 86–87, 2002 O.J. (C 325) 33.

[33] *See* CEFTA 2006, *supra* note 1, Annex 4

[34] *See* Community's DG Taxation and Customs, http://ec.europa.eu/taxation_customs/customs/customs_duties/rules_origin/preferential/article_783_en.htm (providing more information on the Pan-Euro-Med rules of origin and the concept of diagonal cumulation of origin).

[35] *See* CEFTA 2006, *supra* note 1, Annex 1, art. 12. As CEFTA does not define SPS measures, it may be assumed that the definition of SPS measures in Annex A to the SPS Agreement is applicable, too, within the context of CEFTA.

[36] *See* CEFTA 2006, *supra* note 1, Annex 1, art. 12

[37] Agreement on the Application of Sanitary and Phytosanitary Measures, Apr. 15, 1994, Marrakesh Agreement Establishing the World Trade Organization, Annex 1A, Legal Instruments—Results of the Uruguay Round vol. 27 (1994), art. 2.3 [hereinafter SPS Agreement].

[38] *See* WTO Appellate Body Report on Australia—Measures Affecting Importation of Salmon, WT/DS18/AB/R (October 20, 1998), para. 251; *see also* Joan Scott, The WTO Agreement on Sanitary and Phytosanitary Measures: A Commentary (Oxford 2007) at 141; Anja Seibert-Fohr, *Article 2 SPS,* para. 36, *in* WTO, Technical Barriers and SPS Measures (Wolfrum/Stoll/Seibert-Fohr eds., 2007).

[39] *See* SPS Agreement, *supra* note 37, art. 5.5 (establishing a non-discrimination obligation with respect to "the application of the concept of appropriate level of sanitary and phytosanitary protection against risks to human life or health, or to animal and plant life or health"); *see* Appellate Body Report, EC Measures Concerning Meat and Meat Products (Hormones), AB-1997-4, WT/DS26 & 48/AB/R (Jan. 16, 1998), paras. 213–215.

[40] *See* CEFTA 2006, *supra* note 1, Annex 1, art. 13. As CEFTA does not define the notion TBT, it may be assumed that the definitions of "technical regulation" and "standard" in Annex 1 to the TBT Agreement, apply also within the context of CEFTA.

[41] *Id.*

[42] Unless one were to assume that the Parties could deviate from their WTO obligations in their *inter-se* relationship as per Article 30 (4) of the Vienna Convention on the Law of Treaties.

[43] CEFTA 2006 *supra* note 1, Annex 1, art. 13

[44] *Id.*

[45] Agreement on Technical Barriers to Trade, Apr. 15, 1994, Marrakesh Agreement Establishing the World Trade Organization, Annex 1A, Agreements on Trade in Goods, art. 2.2 [hereinafter TBT Agreement]

[46] *See* Ludivine Tamiotti, *Article 2 SPS*, para. 16, *in* WTO, Technical Barriers and SPS Measures (Wolfrum/Stoll/Seibert-Fohr eds., 2007)

[47] TBT Agreement, *supra* note 45, art. 2.3

[48] *See id.*, para. 25.

[49] CEFTA 2006, *supra*, note 1, Annex 1, art. 13. The Joint Committee of CEFTA established a sub-committee on TBT and Non-Tariff Barriers at its first meeting on 28 September 2007.

[50] *Id.* at art. 13(3) lit. c.

[51] *See* CEFTA 2006, *supra* note 1, Annex 1, art. 20.

[52] *See id.*, Annex 1, art. 21.

[53] *See id.*, Annex 1, art. 22.

[54] *See id.*, Annex 1, art. 23.

[55] *Id.*

[56] *See* Gobbi Estrella/Horlick, "Mandatory Abolition of Anti-dumping, Countervailing Duties and Safeguards in Customs Unions and Free Trade Areas Constituted between WTO Members: Revisiting a Long-standing Discussion in Light of the Appellate Body's *Turkey—Textiles* Ruling, in: Bartels/Ortino, *op. cit., supra* note 1, p. 109 *et seq.*; *see also* Christian Pitschas, *Regionale Handelsabkommen: Stärkung oder Schwächung des multilateralen Handelssystems?*, Handel Und Entwicklung Im Zeichen Der WTO—Ein Entwicklungspolitisches Dilemma 101, 127-28 (Rainer Pitschas ed. 2007).

[57] *Cf.*, Mitsuo Matsushita et. al.,The World Trade Organization, 433 (2nd ed. 2006); Michael J. Trebilcok & Robert Howse, The Regulation of International Trade, 260-61 (3d ed. 2005), (discussing the relationship between antitrust and anti-dumping regimes).

[58] CEFTA 2006, *supra* note 1, Annex 1, Joint Declaration on Articles 20 and 21.

[59] *Id.* at Annex 1, Joint Declaration on Articles 21, 22 and 23.

[60] *See* Lesher/Miroudot, *Analysis of the Economic Impact of Investment Provisions in Regional Trade Agreements*, OECD Trade Policy Working Paper No. 36, 6 (2006), *available at* http://www.oecd.org/trade (providing background information on this recent trend).

[61] CEFTA 2006, *supra* note 1, Annex 1, art.1. The "Joint Declaration on Co-operation and Assistance" between the Parties refers to "advice on the ways of organising the appropriate incentive infrastructure for investments, including investment promotion agencies."

[62] *See id.*, Annex 1, art. 32. The term "investment" is not defined. Article 1 (2) lit. b) of CEFTA refers to "investment, including foreign direct investment." Arguably, the latter type of investment is at the centre of the investment chapter of CEFTA. See Concept Paper on the Definition of Investment submitted by the EC and its member states to the WTO Working Group on Trade and Investment, WT/WGTI/W/115 (Apr. 16, 2002), *available at* http://www.wto.org/english/tratop_e/invest_e/invest_e.htm (providing the meaning of "foreign direct investment" and its delimitation to so-called "portfolio investment").

[63] *See* Peter Behrens, Towards the Constitutionalization of International Investment Protection, 45 Archiv Des Völkerrechts, 153, 159 (2007) (discussing investment protection standards under public international law, especially bilateral investment treaties).

[64] *See* CEFTA 2006, *supra* note 1, Annex 1, art. 32(4) (exempting from the national and most-favored nation treatment obligations "all actual or future advantages accorded by either Party by virtue of its membership of a customs, economic or monetary union, a common market or a free trade area.").

[65] *See* Latest Developments in Investor-State Dispute Settlement, IIA Monitor No. 4, 4, UNCTAD, (New York and Geneva 2006); *see also* Behrens, *supra* note 64, at 160-67.

[65] This mode of supply is commonly referred to as "mode 3", in line with Article 1 (2) lit. c) of the GATS.

[66] CEFTA 2006, *supra* note 1, Annex 1, chap. VI

[67] *See* Pierre Sauvé, *Multilateral Rules on Investment: Is Forward Movement Possible?*, 9(2) Journal of International Economic Law, 325, 342 (2006).

[68] CEFTA 2006, *supra* note 1, Annex 1, art. 27.

[69] *Id.*

[70] *See* Martin Roy et al., *Services liberalization in the new generation of preferential trade agreements (PTAs): how much further than the GATS?*, 6(2) World Trade Review 155 (2007) (providing an account of such trade agreements and the liberalization commitments relating to trade in services enshrined therein).

[71] CEFTA, *supra* note 1, Annex 1, Art. 14.